not generally known but, if generally known, might reasonably be expected to affect materially the market price of those securities, he is guilty of an offence against this Act, if he —

(a) deals, directly or indirectly, in those securities for the purpose of gaining an advantage for himself by the use of that information, or

(b) divulges that information for the purpose of enabling another person to gain an advantage by using that information to deal, directly or indirectly, in those securities.

Penalty: Two thousand dollars.

(2) Where an offence under sub-section one of this section is committed and an advantage referred to in that sub-section is gained from a dealing in securities to which the offence relates, any person who gained that advantage is, whether or not any person has been prosecuted for or convicted of that offence —

(a) liable to another person for amount of any loss incurred by that other person by reason of the gaining of that advantage; or

(b) liable to the corporation or body that issued or made available those securities for any profit that accrued to himself by reason of the gaining of that advantage.

(3) Where a loss or profit referred to in sub-section two of this section is incurred by reason of an advantage gained from a dealing in securities, the amount of the loss or profit is the difference between —

(a) the price at which the dealing was effected; and

(b) the price that, in the opinion of the court before which it is sought to recover the amount of the loss or profit, would have been the market price of the securities at the time of the dealing if the specific information used to gain that advantage had been generally known at that time.

(4) The Commission may, if it considers it to be in the public interest to do, bring an action in the name of and for the benefit of a corporation or other body or person for recovery of a loss or profit referred to in sub-section two of this section.

(5) An action to recover a loss or profit referred to in sub-section two of this section may not be brought after —

(a) the expiration of the period of two years next succeeding the dealing in securities to which the action relates; or

(b) the expiration of the period of six months next succeeding the discovery of the relevant facts by the person who suffered the loss or seeks to recover the profit,

whichever occurs first.

(6) For the purposes of sub-section one of this section, a person is associated with a corporation or other body —

(a) if, in the case of a corporation, he is an officer of the corporation or of a related corporation within the meaning of the Companies Act 1961;

(b) if, in the case of a body other than a corporation, he bears to that body a relationship analogous to the relationship borne to a corporation by an officer of the corporation;

(c) if he acts, or has acted, as banker, solicitor, auditor or professional adviser, or in any other capacity for the corporation or body;

(d) if he has a beneficial interest in one or more shares in the corporation or body and the nominal amount of that share, or the aggregate of the nominal amounts of those shares is not less than one tenth of the aggregate of the nominal amounts of all the issued shares of the corporation or body;

(e) where the person so associated by virtue of paragraph (c) or (d) of this sub-section is a corporation, if he is a director, manager or secretary of that corporation."

Appeal dismissed.

Solicitors: *Ganesan & Co.*

MALAYSIAN REPORTS

TENGKU MARIAH BINTE SULTAN SULAIMAN v. HALIMAH BINTE ABDULLAH

[F.C. (Raja Azlan Shah C.J. (Malaya), Syed Othman & Salleh Abas F.JJ.) June 12, 1979]

[Kota Bharu — Federal Court Civil Appeal No. 55 of 1979]

Practice and Procedure — Limitation — Sale of land — Claim for land to be transferred — Acknowledgement after expiry of period of limitation — Respondent in possession of premises — Equity.

In this case the respondent brought an action for an order that the appellant execute a transfer of the title of a piece of land which the respondent claimed had been sold to her. The appellant's defence was that the action was time barred as it was commenced more than twelve years after the title was registered in the appellant's name. The previous solicitors of the appellant had written to the respondent that the appellant was prepared to sign a transfer of the land into the name of the respondent. The learned trial judge held that the letter of the solicitors for the appellant was a sufficient acknowledgement and therefore the respondent's claim was not statute-barred — See [1980] 1 M.L.J. 240. The appellant appealed.

Held: (1) as the facts showed that the respondent was in possession of the land and had built two or three houses on it, she was the equitable owner of the land and so long as she was in possession of the land she did not lose her rights simply by not proceeding at once for specific performance;

(2) in the circumstances it was unnecessary to consider whether an acknowledgement made after the expiry of the period of limitation could revive the period of limitation.

Cases referred to:-

(1) *Munah* v. *Fatimah* [1968] 1 M.L.J. 54, 55.

(2) *Kersah La' Usin* v. *Sikin Menan* [1966] 2 M.L.J. 20.

(3) *Williams* v. *Greatrex* [1957] 1 W.L.R. 31.

(4) *Othman & Anor.* v. *Mek* [1972] 2 M.L.J. 158.

FEDERAL COURT.

Mrs. Cecilia Fernandez for the appellant.

Wan Abdul Muttalib for the respondent.

Cur. Adv. Vult.

Syed Othman F.J. (delivering the judgment of the Court): At the hearing in Kota Bharu we dismissed this appeal with costs to the respondent.

On the only point to be determined in this appeal we found that the respondents' action for an order that the appellant execute a transfer of the title to a piece of land which the appellant had sold to the respondent was not time-barred under the Limitation Ordinance.

These are our reasons:

At the trial both sides relied on the pleadings. The facts as averred in the pleadings were not disputed. In 1951 the respondent paid the appellant $450 for the land. In the deed of sale entered into, the appellant agreed to execute a valid transfer of the land immediately on the land being registered in the appellant's name; the land had been so registered; in 1977 the respondent caveated the land; in 1978 in reply to the respondent's letter requesting transfer of the title, the appellant, through her solicitor, admitted that she was willing to sign any document of transfer; the respondent prepared a document of transfer and sent it to the appellant's solicitor; there was no reply; two

reminders sent in February and March 1978 again brought no response.

The appellant's defence was that her obligation ran from 1963 when the title was registered in her name and the respondent's action was statute-barred, as it was only commenced in 1978, after 12 years had lapsed.

There were also before the court the agreement of sale and correspondence and their translations relating to the transactions (pages 19 to 29 in the record of appeal).

The learned trial judge after hearing the arguments found for the respondent. His reasons may be put briefly thus: The appellant did not deny specifically that she had received a letter from the respondent asking that the land be transferred to the respondent and that by the appellant's reply to that letter, through her solicitor, she expressed willingness to execute the transfer. The material parts of the reply dated June 14, 1978 read:

"'Y. M. Tengku' (the appellant) 'has stressed that she never had the slightest intention of committing breach of the Agreement drawn in respect of the sale of the land to you' (the respondent). 'Although this had happened long ago, the honourable Tengku still complies with the agreement executed in respect of the above land."

By this, the learned trial judge found that there was an acknowledgment by the appellant, which under section 26(1) of the Limitation Ordinance, 1953 had the effect of running afresh the limitation period from the date of acknowledgment.

The learned trial judge seemed to be of the view that nothing turned on the submission of respondent's counsel that the respondent was in possession of the land and had built 2 or 3 houses on the land, as the facts were not adduced in evidence and not even pleaded. But we are of the view the fact of possession could be inferred from the respondent's action, which is for execution of a transfer and not for recovery of land. Indeed before us, counsel for the appellant conceded that the respondent had gone into occupation of the land even before the payment of $450 and the execution of the agreement of sale in 1951, and that the respondent had built three houses on the land. In view of this, we do not consider it necessary to relate this case to the question of acknowledgment or more particularly, to deal with the question whether in the circumstances of this case an acknowledgment made after the expiry of the limitation period revives the period. The appellant's side has argued that such acknowledgment does not revive the period.

In our view the respondent's action is not affected by limitation by reason of her having been in possession of the land from the time of purchase, and the present case fits squarely with the principle laid down by Raja Azlan Shah J. (as he then was) in *Munah* v. *Fatimah*[1] where he said:

"The legal position is that there is an ordinary contract for the sale of land, ... Relying on the contract the plaintiff went into occupation and did such acts as were necessary and relevant to show that she was in possession. She never got off the land. As from that time, it seems to me, that she was the equitable owner of the said land. What is required now is to clothe the equitable estate with a legal title. She therefore seeks the aid of this court. In my opinion she is well entitled to the relief she claims."

In dealing with the contention by the vendor that the action was statute-barred (as in the present case), Raja Azlan Shah J. following his earlier decision in *Kersah La' Usin* v. *Sikin Menan*[2] relied on the English authority, *Williams* v. *Greatrex*[3] where Denning L.J. (as he then was) said at page 36:

"... once the purchaser went into possession of the land, having the contractual right to be there, he not only had an equity to be there, but also the benefit of a contract to sell him these two plots. That was not only an equity: it was an equitable interest in the land. He was in a sense the equitable owner of the land. So long as he was in possession of the land, he does not lose his rights simply by not proceeding at once for specific performance."

This principle has been adopted by this court in *Othman & Anor.* v. *Mek.*[4]

Order accordingly.

Solicitors: *Syed Ibrahim & Co.; Wan Abd. Muttalib & Co.*

PUBLIC PROSECUTOR v. KOO CHEH YEW & ANOR.

[F.C. (Suffian L.P., Raja Azlan Shah C.J. (Malaya), Wan Suleiman F.J., Chang Min Tat F.J. & Syed Othman F.J.) March 24 & July 1, 1980]

[Kuala Lumpur — Federal Court Criminal Reference No. 2 of 1977]

Criminal Law and Procedure — Charge of importing products of South Africa — Goods prohibited from importation — Mens Rea — Denial by accused of knowledge of relevant prohibition — Whether ignorance of law an excuse — Mistake of fact and of law — Publication in Gazette — Presumption — Onus of proof on accused — Penal Code, s. 135(1)(a) and (2).

Customs — Charge of importing products of South Africa — Goods prohibited from importation — Publication in Gazette — Presumption — Customs Act, 1967, s. 135(1)(a) and (2).

In this case the accused persons were charged in the Sessions Court in Penang with being concerned in importing 6 pianos which being the products of South Africa were by law prohibited goods. They were convicted and they appealed to the High Court. In the High Court Arunalandom J. held that on the facts of the case the accused had no guilty mind and he therefore quashed the convictions, ([1978] 1 M.L.J. 141). The Public Prosecutor then applied for a certificate to refer to the Federal Court certain questions of law of public interest. The questions were:—

"(1) In a prosecution against the accused under section 135(1)(a) of the Customs Act, 1967, of being concerned in importing prohibited goods contrary to a prohibition does a denial by the accused of knowledge of the relevant prohibition order entitle him to an acquittal?

(2) Is not the denial of knowledge under section 135(2) of the Customs Act, 1967, limited only to denial of knowledge as to the facts and not as to the law concerning prohibited goods?

(3) Is it not sufficient for the prosecution to prove that the goods imported were of the description mentioned in the prohibition order in order to show that such importation was contrary to the prohibition?

(4) In a proceeding against the accused under section 135(1)(a) of the Customs Act, 1967, of being concerned in importing prohibited goods contrary to a